BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JEFFREY A. CHERRY	)	
Claimant	)	
VS.	)	
	)	Docket No. 270,815
COCA-COLA ENTERPRISES, INC.	)	
Respondent	)	
	)	
AND	)	
	)	
AMERICAN CASUALTY COMPANY	)	
OF READING, PA	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appeal the February 21, 2002 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

Issues

Claimant alleges he injured his back, groin and left leg by repetitively lifting and stacking cases of soda pop at work on or about September 15, 2001, and each and every working day thereafter. Judge Barnes granted claimant's request for preliminary benefits. Respondent and its insurance carrier (Respondent) dispute this award and argue claimant failed to prove that he suffered personal injury by accident arising out of and in the course of his employment with respondent. This is the issue for Appeals Board (Board) review.

Findings of Fact and Conclusions of Law

After reviewing the record compiled to date, the Board finds that the Administrative Law Judge's (ALJ) Order should be affirmed.

For an injury to be compensable, a claimant must prove that the injury was caused

by an accident which arose out of and occurred in the course of employment.[1] An injury is also compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.[2] In such cases, the test is not whether the accident caused the condition, but whether the accident aggravated or accelerated a preexisting condition.[3]

Workers have the burden of proof to establish their rights to compensation and to prove the various conditions upon which those rights depend.[4]

"Burden of proof" means the burden to persuade by a preponderance of the credible evidence that a party's position on an issue is more probably true than not when considering the whole record.[5]

Claimant's job duties with respondent consisted mostly of lifting and stacking cases of soda pop on pallets. As a result of this work activity he began to experience pain in his back, left hip and leg.

At the December 13, 2001, preliminary hearing, claimant acknowledged he had suffered a prior back injury in an automobile accident before going to work for respondent.

Also, at one point, claimant had told his employer that his current symptoms were due to an illness.

Claimant initially treated with a chiropractor, Dr. Grado. His records indicate that claimant related his problems to lifting at work.

Claimant also treated with Dr. Mark Dobyns. Dr. Dobyns records likewise contain a history of low back, left groin and left lower leg pain from moving cases of pop bottles.

At the conclusion of the preliminary hearing, Judge Barnes ordered an independent medical evaluation with Dr. Jane Drazek. According to the report of Dr. Drazek's December 28, 2001 examination, claimant presented a history of gradual onset of

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[1] K.S.A. 44-501(a).

[2] Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971); Hanson v. Logan U.S.D. 326, 28 Kan. App. 2d 92, 11 P.3d 1184, *rev. denied* ___Kan. ___ (2001).

[3] Woodward v. Beech Aircraft Corporation, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

[4] K.S.A. 44-501(a).

[5] K.S.A. 44-508(g).

symptoms approximately one and one-half months after beginning his job with respondent after repetitively forward bending to lift cases of pop. Dr. Drazek diagnosed chronic intermittent low back pain, most likely myofascial etiology, along with a probable anxiety disorder. Included in Dr. Drazek's report were her recommendations for treatment and work restrictions.

Respondent challenges the sufficiency of the medical evidence, noting that no physician specifically relates claimant's condition to his employment based upon a reasonable degree of medical certainty. Expert medical opinion testimony, however, is not necessary to prove causation. Furthermore, there is no expert medical opinion that contradicts claimant's contentions of a work related injury or aggravation.

Of greater concern are the inconsistent statements claimant gave his employer about his injury. Claimant's explanation for these statements leaves something to be desired. Nevertheless, based on the record compiled to date, the Board finds claimant has met his burden of proving that he was injured while working for the respondent. Therefore, the request for preliminary hearing benefits was properly granted.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.[6]

WHEREFORE, the Appeals Board affirms the February 21, 2002 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

IT IS SO ORDERED.

Dated this _____ day of July 2002.

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BOARD MEMBER

c: Brian R. Collignon, Attorney for Respondent and Insurance Carrier
David M. Bryan, Attorney for Claimant
Nelsonna Potts Barnes Administrative Law Judge
Philip S. Harness, Workers Compensation Director

[6] K.S.A. 44-534a(a)(2).